

# ENVIRONMENTAL PROTECTION AGENCY

## b. New Cumberland

The New Cumberland case was our first contact with the U.S. Attorney for the Northern District of West Virginia following enactment of the 1972 amendments to the FWPCA.

In August, 1974, the City of New Cumberland advised us that it was not conducting the sampling program required by its permit. In October we issued an administrative order requiring a schedule for the institution of a sampling program. In March of 1975, finding that the City had not complied with the Order, we contacted the U.S. Attorney to discuss the contents of an anticipated referral package.

Such papers as were prepared in the course of these discussions are enclosed. Ultimately, in September, 1975, the U.S. Attorney met in his office with representatives of EPA and of New Cumberland. The City agreed to an acceptable schedule for complying with the sampling requirements, and the matter was resolved.

### CONCURRENCES

SYMBOL	▶							
SURNAME	▶							
DATE	▶							



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James Companion  
U.S. Attorney for Northern District  
of West Virginia  
P. O. Box 591  
Wheeling, West Virginia 26003

AUG 15 1975

Dear Mr. Companion:

Pursuant to our meeting with you on July 15, I am sending you the following items:

- (a) copies of all documents relevant to the New Cumberland case;
- (b) a summary of the compliance status of 13 municipalities in the Northern District of West Virginia which we know to be having difficulty meeting permit requirements, or otherwise in violation;
- (c) a draft letter to Mayor Joy; and
- (d) a statement of the law of the case.

Ray George advises me that he knows the status of the Ohio River Steel and Chemical Companies that you asked about, and will call you to discuss them. We will be glad to provide a more formal presentation if you desire it.

I regret that it has taken me a month to get this material together for you - unfortunately our meeting occurred when I was in the midst of a quite hectic schedule.

Please let me know if there is any more information which you need before scheduling the meeting with New Cumberland. If you wish to discuss the matter, I can be reached at (215) 597-8918.

We greatly appreciate your cooperation in this matter.

Sincerely yours,

John V. Buffington  
Attorney  
Enforcement Division

EN30 Buffington/jcm:8-15-75

Enclosures



## STATUTORY AUTHORITY

The Administrator of the Environmental Protection Agency is authorized to conduct the NPDES permit program by the Federal Water Pollution Control Act, 33 U.S.C. §1251, 1342. This authority is delegated to the Regional Administrator by regulation, at 40 CFR 125.5 (as to the issuance of permits) and EPA Order 1260.6, dated September 14, 1973 (as to the enforcement of NPDES permits.) In our Region, the Regional Administrator has redelegated his authority to enforce permits to the Director of the Enforcement Division. (Memorandum of December 13, 1973.)

The Act authorizes us to issue permits to municipalities which require the achievement of the more stringent of secondary treatment or limitations necessary to meet water quality standards, by July 1, 1977 (§§1342(a)(1) and 1311(b)(1)(B) and (C).) Prior to the taking of actions necessary to meet these requirements, we are authorized to impose such conditions as we determine are necessary to carry out the intent of the Act (§1342(a)(1).) The latter requirements are known as "interim conditions."

In the case of New Cumberland, we imposed an interim condition requiring the City to conduct sampling and analysis regarding the following parameters:

- Total Flow
- BOD<sub>5</sub>
- Suspended Solids
- Fecal Coliform
- pH.

The City advised us on August 12, 1974, that it was not complying with the sampling and analysis requirement.

The Act authorizes us, on finding that a discharger is in violation of its permit, to either issue an administrative order or bring a civil action (§1319(a)(3).)

We issued an administrative order to New Cumberland on October 8, 1974, directing that the City submit a schedule by which it would initiate sampling and analysis. The City is in violation of this Order.

The Act authorizes us to commence a civil action for appropriate relief, for any violation for which we may issue an order (§1319(b).) The action is to be brought in the District Court of the United States

for the district in which the defendant is located. In the case of a civil action against a municipality, the State in which the municipality is located must be joined as a party, and may be liable for the expenses resulting from the judgment (§1319(e).)

When we initiate a civil suit under the Act, we are directed to request the Attorney General to appear and prosecute the case (§1366.)



Mayor Kenneth R. Joy  
City of New Cumberland  
106 Court Street  
New Cumberland, West Virginia 26047

Dear Mayor Joy:

I have been advised by the Environmental Protection Agency that the City of New Cumberland remains in violation of the Administrative Order, number 74-242, which was issued to the City of New Cumberland on October 8, 1974. EPA is required by the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., to refer the matter to me for the institution of legal action if this situation continues.

In order to determine whether the matter can be resolved without recourse to the federal courts, I propose a meeting in my office to discuss the City's obligations under the Federal Water Pollution Control Act, and possible means of terminating the present violations. I believe that the following parties should be present: yourself, as Mayor, the City Clerk, the City Attorney, one or more representatives of the City's water board, one or more representatives of the City's engineering firm, and one or more representatives of EPA. If you believe that others should be invited, you are free to do so.

I propose that this meeting take place in my office on \_\_\_\_\_. If that date is not convenient, we will endeavor to work out a mutually agreeable one.

Please let me know as soon as possible whether you agree to a meeting as outlined above, or propose an alternate date.

Sincerely yours,

James Companion

cc: Sharon D. Northcraft  
City Clerk  
New Cumberland, West Virginia 26047

Donald R. Vaughn  
Cerrone & Vaughn, Inc.  
401 Main Street  
Wheeling, West Virginia 26003

John V. Buffington, Esq.  
Environmental Protection Agency, Region III  
6th and Walnut Streets  
Philadelphia, Pennsylvania 19106

Mayor Kenneth R. Joy  
City of New Cumberland  
106 Court Street  
New Cumberland, West Virginia 26047

**DRAFT**

SEP 8 1975

Dear Mayor Joy:

This letter is intended to set forth the agreements which were reached at the meeting in my office of September 4, 1975, by representatives of the City of New Cumberland, the State Health Department, the Environmental Protection Agency, and myself.

The Environmental Protection Agency has agreed to reduce the monitoring requirement for BOD<sub>5</sub>, Suspended Solids and Fecal Coliform to twice per month. This change requires revision of the City's NPDES permit, and can be made only after certification of the proposed revision by the State of West Virginia, pursuant to §401 of the Federal Water Pollution Control Act.

New Cumberland has agreed to take the following steps:

- 1) Within thirty days following our meeting (by October 5, 1975), complete arrangements to have all required sampling and analysis done;
- 2) Within sixty days following our meeting (by November 4, 1975), meet with other localities included in the §201 planning area designated by the State of West Virginia, and either conclude agreements for the funding of the §201 study, or determine what objections the other localities have to participation in the study;



and either conclude agreements for the funding of the \$201 study, or determine what objections the other localities have to participation in the study;

- 3) Within sixty days following our meeting (by November 4, 1975), submit a Format #5 and subsequent Step 1 application to the West Virginia Department of Natural Resources;
- 4) Report to EPA, at least every two weeks, on the status of the monitoring program, the \$201 grant application, the efforts to restore full primary treatment at the plant, and the efforts to obtain a permanent operator for the plant. This reporting is to continue until all of the above steps have been completed;
- 5) From now on, New Cumberland will comply with General Conditions 9 and 11 (pages 8 and 9) of the permit, regarding the reporting of bypasses of the plant and other instances of noncompliance to EPA.

Please send me a letter, either agreeing to the provisions set forth above, or setting forth your objections, within five days of receipt of this letter.

Sincerely yours,

James F. Companion  
United States Attorney

cc: (See attached page)

## Copies to:

Ronald E. Wilson, City Solicitor  
Phillips Building  
P. O. Box 638  
New Cumberland, West Virginia 26047

Sharon D. Northcraft, City Clerk  
City of New Cumberland  
106 Court Street  
New Cumberland, West Virginia 26047

Donald R. Vaughn  
Cerrone & Vaughn, Inc.  
401 Main Street  
Wheeling, West Virginia 26003

John V. Buffington, Attorney  
Enforcement Division  
Environmental Protection Agency, Region III  
6th and Walnut Streets  
Philadelphia, Pennsylvania 19106

Raymond C. George  
Environmental Protection Agency  
303 Methodist Building  
Wheeling, West Virginia 26003

Mr. Warren H. Means, P.E.  
Head, Municipal Wastes Section  
West Virginia Department of Natural Resources  
Division of Water Resources  
1201 Greenbrier Street  
Charleston, West Virginia



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION III

In the matter of : No. 74-242  
City of New Cumberland : ORDER  
New Cumberland, West Virginia 26047 :  
Proceeding under §309(a)(3) Federal :  
Water Pollution Control Act :

FINDINGS OF FACT

1. On June 28, 1974, the Environmental Protection Agency, Region III (the "Agency") issued an NPDES permit, No. WV 0025119, to the City of New Cumberland, West Virginia (the "City") for a discharge to the Ohio River from a facility known as the New Cumberland Sewage Treatment Plant. This permit became effective on July 28, 1974.

2. On page 5 this permit requires the City to monitor the operation and efficiency of all treatment and control facilities on an average monthly basis, and to submit to the Agency reports of these values, on a quarterly basis. Quarterly reports are required for periods beginning on the first day of April, July, October, and January.

3. On page 6 this permit lists the parameters to be monitored and reported by the City. They are:

Total Flow  
BOD/5  
Suspended Solids  
Fecal Coliform  
pH

4. In a letter dated August 12, 1974, Sharon Northcroft, City Clerk, advised the Agency that the City is at present unable to comply with the monitoring requirements set by the permit, due to lack of equipment. Ms. Northcroft stated the City's intention of purchasing such equipment, but gave no date by which the purchase would be made.

CONCLUSIONS OF LAW

1. The City's failure to conduct all required monitoring is a violation of its NPDES permit duly issued pursuant to Section 402(a) of the Federal Water Pollution Control Act. The City is therefore in violation of Section 301(a) of that Act.

## ORDER

AND NOW this  
hereby ordered that:

day of

1974, it is

1. Within thirty days of receipt of this order, the City shall submit to the Agency the following information:

- (a) the location of the nearest laboratory capable of analyzing samples from the City's sewage treatment plant for those parameters which the City is not prepared to assess; and
- (b) a schedule by which the City will either
  - (1) acquire the necessary equipment to conduct all necessary laboratory tests required by the permit, or
  - (2) have all necessary tests performed by an outside laboratory.

This schedule is subject to approval by the Agency.

ORIGINAL SIGNED BY

William J. Riley  
Stephen R. Wattersug  
Director  
Enforcement Division